

February 2, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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JOHN CORNYN
Attorney General

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Mr. John S. Schneider, Jr.
First Assistant City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501-0672

OR99-0305

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121985.

The City of Pasadena (the city) received a request for all information relating to the city's program allowing retiring employees of the police department to transfer funds from their sick pay into their deferred compensation fund. You explain that the city has twelve responsive pages that are maintained by the Chief of Police in the police department's personnel files. You claim that the responsive documents must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. You also claim that the responsive documents may be withheld under section 552.103 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." You represent that the documents at issue are personnel files maintained by the Police Department under section 143.089(g) of the Local Government Code. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the city's police department is required to maintain as part of the police officer's civil service file, and one that the city's police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

Section 143.089(g) reads as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director [of the civil-service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Subsection (g) authorizes city police and fire departments to maintain for their own use a file on a police officer or fire fighter that is separate from the file maintained by the city civil service commission. "The department may not release any information contained in the department file to any agency or person," but instead "the department shall refer to the director [of the civil-service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file." Local Gov't Code § 143.089(g); see *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 952 (Tex. App.--Austin, 1993, writ denied).

The court in *City of San Antonio* addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied) (in construing section 143.089 the court found general legislative policy that allegations of misconduct against police officers and fire fighters not be subject to compelled disclosure unless they have been substantiated and resulted in disciplinary action). You inform this office that the requested information is not maintained in the officer's civil service file, but rather is maintained in the section 143.089(g) internal personnel file. Consequently, if the requested records are maintained only within the internal, section 143.089(g) file, the submitted records are confidential and may not be disclosed. However, if the responsive records exist elsewhere, outside the section 143.089(g) file, the information would be subject to disclosure under the Open Records Act.

Because we make determination under section 552.101, we do not consider your additional argument against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this

request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Don Ballard". The signature is fluid and cursive, with the first name "Don" being more prominent than the last name "Ballard".

Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 121985

Enclosures: Submitted documents

cc: Mr. Gregory Cagle
Cagle & McCumber
P.O. Box 729
League City, Texas 77574
(w/o enclosures)